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LETTER DATED 8 NOVEMBER 1999 FROM THE PERMANENT REPRESENTATIVE OF RWANDA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to forward herewith the statement issued on 6 November 1999 by the Minister of Foreign Affairs and Regional Cooperation on the decision of the International Criminal Tribunal for Rwanda (see annex).

I would like by the same token to share on the part of the Government of Rwanda our views on the decision of the Appeals Chamber of the International Criminal Tribunal for Rwanda and the Former Yugoslavia to release from detention and dismiss criminal charges against Jean Bosco Barayagwiza on 3 November 1999. We received this decision with profound shock and disbelief, and that is why the Government of Rwanda has decided to suspend, within the limits permitted by our law and applicable international law, all cooperation with and assistance to all organs of the International Criminal Tribunal for Rwanda.

The decision of the Appeals Chamber is based on the grounds that the period of the appellant's provisional detention was impermissibly lengthy and violated the appellant's right to be promptly charged pursuant to international standards and on the violation of his right to have an initial appearance before the trial chamber without delay.

The Government of Rwanda condemns the decision in question in the strongest terms possible. The following is an explanation of the reasons for the position we have taken.

The case against Jean Bosco Barayagwiza

Perhaps the most extremist of the political organizations responsible for the genocide of 1994 in Rwanda was the Coalition pour la défense de la République (CDR). This organization was the brainchild of Barayagwiza. He was its founder and guiding spirit, and the organization was under his absolute control during the entire period of its operation.

Initially, Barayagwiza chose to control the party from behind the scenes because he was still a senior civil servant in the Ministry of Foreign Affairs. He was content to keep the official post of "Political Adviser" of CDR at the

national level for a time. There is no doubt, however, that he was at all material times in absolute control of the organization.

When Bucyana, president of CDR, died, Barayagwiza did not find it necessary to maintain the façade any more. He took over as national president of CDR.

CDR promoted an extremist political ideology which called for the extermination of the Tutsis. The party set up a militia, the Impuzamigambi, to implement this objective. The Impuzamigambi committed horrendous atrocities across Rwanda. Barayagwiza has admitted his role in organizing this militia to kill the Tutsi in his own writings, quoted in the Human Rights Watch/FDIH study entitled "Leave none to tell the story".

Barayagwiza was one of the principal political strategists of the political military class, which decided to carry out genocide in order to maintain its stronghold over the country. He attended many meetings with politicians, military officers and businessmen at Kigali, during which the plans for carrying out genocide were hatched.

He was also instrumental in securing arms which were used to commit killings in some areas from the Forces Armées Rwandaises.

He played a very active part in raising money for financing Impuzamigambi militia and supporting the extremist political causes of CDR.

Barayagwiza was one of the most active promoters of genocide in the Kigali and Gisenyi Prefectures. He was a very vociferous proponent of the ideology calling for the complete destruction of the Tutsi. He propagated these views openly at many public rallies at Kigali and in many press interviews.

In particular, Barayagwiza presided over meetings to plan killings in his home commune of Mutura at Gisenyi. He distributed guns and gave money to the population in furtherance of the plan to exterminate the Tutsi and political opponents. At several public meetings in Mutura commune, Barayagwiza incited the population to commit atrocities.

Barayagwiza was one of the core promoters, a shareholder and a member of the board of directors of the private radio station Radio Television Mille Collines (RTLM). He was also involved in the day-to-day management of RTLM as a tool for the promotion of the extremist causes which he espoused. The radio station incessantly broadcast speeches, discussions and songs promoting hatred and hostility against the Tutsi and inciting the population to murder them. Barayagwiza's own speeches in the same vein were regularly broadcast on the radio.

Mr. Barayagwiza is not a common criminal. He is not even an ordinary genocide suspect. He is a well-educated man, a respected intellectual, a former international servant and senior government official who chose to put his talent and prestige at the service of like-minded politicians determined to exterminate a section of the population. Barayagwiza is one of the intellectual architects of a planned campaign of genocide, which claimed the lives of more than a million people.

There is overwhelming evidence of Barayagwiza's involvement in genocide and other violations of human rights and international law, as well as many serious offences contrary to the provisions of Rwanda's penal code.

The decision

The decision of the Appeals Chamber is deeply flawed and constitutes a gross abuse of judicial power and discretion.

In reaching its decision, the Appeals Chamber has extensively relied on judicial precedents of dubious relevance. Not a single case of the vast number of authorities cited by the judges related to a suspect accused of genocide, war crimes or other large-scale violations of human rights and international humanitarian law.

The decision does not make any attempt whatsoever to weigh the prejudice purportedly suffered by the appellant against the gravity of the offence of which he is accused. The indifference of the court to the violation of the rights of the victims of the genocide is particularly appalling in the light of the available literature outlining Barayagwiza's pivotal role in the genocide which has been documented by such organizations as Africa Rights (Death, Despair and Defiance, 1995) and Human Rights Watch in the study quoted above, and above all by Barayagwiza's own press interviews and writings.

In attempting to make a point on the human rights of one individual over the corpses of the more than a million victims of the 1994 genocide, the decision not only illustrates the utter ignorance of the court as to what happened in Rwanda but also betrays a worrying gross misunderstanding of the whole purpose of the existence of the Tribunal. The Tribunal was primarily established to bring about accountability for those who organized genocide. It was not established to provide redress for individuals. That is the work of national jurisdictions. In any case, the victims of large-scale human rights violations are human beings too and equally deserving of the court's protection.

There is absolutely no justification for a decision to dismiss the charges against Barayagwiza. The delay of several months in transferring him from Cameroon did not prejudice his ability to prepare his defence. The hardship he allegedly suffered in Cameroon jails is negligible compared to the suffering that his victims endured.

The Appeals Chamber attributes the cause of the prejudice occasioned to the negligence of the International Criminal Tribunal for Rwanda Prosecutor. The ends of justice are not served by penalizing the people of Rwanda for the shortcomings of a United Nations prosecutor over whom they have no control.

The people of Rwanda feel betrayed that internal misunderstanding between the various organs and officers of the Tribunal are contributing to frustrate the pursuit of justice for the crimes which were committed in their country.

The assertion that the only remedy available for the prosecutorial inaction and the resultant denial of rights occasioned to the appellant is release and dismissal of the charges is wrong. The appellant could conceivably be

adequately compensated with an award of civil damages. Victims of arbitrary arrest and detention are compensated in this manner by the courts the world over. There is no reason why the United Nations cannot pay monetary compensation to someone in the appellant's position. On the other hand, justice for the victims of the crimes of which the appellant is accused can only be served by establishing the truth through a trial of the case against the accused on its merits.

Conclusion

In view of the foregoing, the Government of Rwanda has decided to suspend within the limits permitted by our laws and applicable international law all cooperation with and assistance to all organs of the International Criminal Tribunal for Rwanda.

This suspension will remain in force until acceptable arrangements are put in place to ensure that the injustice occasioned by the present decision does not recur.

The Government of Rwanda calls upon the organs of the United Nations, in particular the Security Council and the International Criminal Tribunal for Rwanda, to work towards changing the rules on which the decision is based in order to ensure that the injustice occasioned by this precedent is rectified.

The Government of Rwanda further reiterates its commitment to working together with the international community to find a just and fair solution to the current crisis.

I would be most grateful if this document and its annex could be circulated as a document of the Security Council.

(Signed) Joseph W. MUTABOBA
Ambassador
Permanent Representative

Annex

[Original: French]

Statement issued on 6 November 1999 by the Ministry of Foreign Affairs and Regional Cooperation of Rwanda on the recent decision by the International Criminal Tribunal for Rwanda to release Mr. Jean Bosco Barayagwiza, the leading ideologist of the 1994 genocide

The Government of Rwanda has just learned of the decision by the International Criminal Tribunal for Rwanda to release Mr. Jean Bosco Barayagwiza. This decision by the Appeals Chamber of the Tribunal was taken on 3 November 1999.

Mr. Jean Bosco Barayagwiza was arrested in Cameroon in November 1997 for his role in the planning and organization of the 1994 genocide.

To the great surprise of the Government of Rwanda and of national and international public opinion, this leading ideologist of the genocide has just been declared released on somewhat eccentric grounds.

On concluding its deliberations, the Appeals Chamber of the Tribunal stated that the rights of the party concerned had not been respected, in that he had been arrested and imprisoned without being charged. It concluded therefrom that Mr. Jean Bosco Barayagwiza should be released, with the possibility of returning to Cameroon.

The Government of Rwanda wishes to state its indignation, and registers a strong protest against this action, which is not commensurate with the seriousness of the genocide and other crimes against humanity committed in Rwanda in 1994.

Need it be recalled that Mr. Jean Bosco Barayagwiza is one of the leading designers and ideologists of the extremist party Coalition pour la défense de la République, an appendage of the hard-line wing of the Mouvement révolutionnaire national pour le développement? Need it be recalled that this same Barayagwiza was one of the founders of the notorious Radio Télévision des Mille Collines (RTLM), the audiovisual counterpart of the RTLM/Kangura pairing which developed and maintained the ideology of genocide?

Mr. Barayagwiza's release will no doubt serve as a pretext for leaving unpunished all the other perpetrators of genocide who are still free to roam the world.

Under these circumstances, the Government of Rwanda does not see how it can continue to cooperate with the Tribunal.

We therefore urgently appeal to the United Nations organs, to the Security Council and in particular to the Tribunal to halt this dangerous precedent.

(Signed) Augustin IYAMUREMYE
Minister for Foreign Affairs
and Regional Cooperation